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THE IMPACT OF RISING AIRPORT LIABILITY INSURANCE
PREMIUMS ON AIRPORT FACI. (U) FEDERAL AVIATION
ADMINISTRATION WASHINGTON DC OFFICE OF AIRPO.

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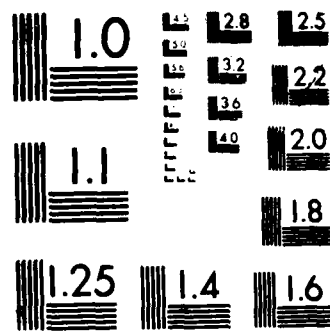
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U.S. Department
of Transportation
Federal Aviation
Administration

The Impact of Rising Airport Liability Insurance Premiums on Airport Facilities and on Airport Capacity

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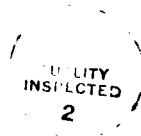
Report of the Administrator of the
Federal Aviation Administration to the
Senate and House Appropriations Committees
Pursuant to House Report 99-831

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16. Abstract This report is in response to the requirement in House Report 99-831 accompanying House Joint Resolution 738, the fiscal year 1987 continuing appropriation bill. The Federal Aviation Administration (FAA) was directed to survey the problem of rising liability insurance premiums on airport facilities and to assess its impact on airport capacity. This report presents the results of interviews with airport, aviation and insurance officials and discusses the reasons for recent airport closures, including those attributable to high liability insurance costs. The report concludes that liability insurance costs have not been a major factor in airport closures nor have they had an adverse impact on airport capacity.			
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FEDERAL AVIATION ADMINISTRATION

REPORT TO CONGRESS

THE IMPACT OF RISING AIRPORT LIABILITY INSURANCE PREMIUMS ON AIRPORT FACILITIES AND ON AIRPORT CAPACITY

This report is in response to the requirement in House Report 99-831 accompanying House Joint Resolution 738, the fiscal year 1987 continuing appropriation bill. The Federal Aviation Administration (FAA) was directed to survey the problem of rising liability insurance premiums on airport facilities and to assess its impact on airport capacity.

EXECUTIVE SUMMARY

Some recent historical data give rise to concern about the future ability of the nation's airports to accommodate forecast aviation activity. Since 1970, the number of aircraft landing facilities open to the public has declined by more than 1,300 (about 18.5 percent); between 1980 and 1986, the FAA received notices of abandonment for nearly 1,500 airports; and from 1981 through 1986, the number of public-use airports, including those both publicly and privately owned, declined by more than 400 from 5,846 to 5,434.

Taken alone, these statistics may be alarming to anyone who supports a thriving aviation industry and a national system of airports capable of accommodating forecast aviation growth. FAA policy clearly advocates an airport system commensurate in capacity with that of the nation's airspace, and the loss of 400 public use airports is not easily dismissed.

A more comprehensive look at the same data base, however, provides a contrasting view of trends in airport statistics. For example, the total number of landing facilities (public and private) in 1970 increased by nearly 50 percent to over 16,500 in 1986; the number of heliports increased four-fold to more than 3,300; and the number of publicly owned airports open to the public grew modestly from 3,764 to 4,007. Further, even though more than 1,100 private use airports were abandoned between 1980 and 1986, there was a net gain of 744 such facilities over the same period.

This survey focused primarily on airports that are open to the public and are publicly owned, generally by a unit of local government. The results show that cities and counties that own and operate such airports have experienced substantial increases in liability insurance costs. For many airports, the cost of liability insurance has more than tripled in the last three years. These cost increases are similar to increases affecting all persons, businesses and governmental entities that need to protect themselves against the inherent risk of conducting their normal activities and services.

Increases in airport liability insurance premiums have forced some counties and cities to make difficult budgetary decisions about the continued operation of their public-use airports. Although most have been able to accommodate the increased costs, the short notices of higher premiums by many underwriters tend to cause short-term municipal budget crises and deprive the proprietors of the opportunity to seek alternative, more economical sources of insurance.

In spite of this, closures of publicly owned, public-use airports are generally not caused by increased cost or unavailability of liability insurance. Although there are exceptions to this finding, they are not significant from a national perspective, either in the provision of needed local air travel or as components of a national system of public-use airports. This is not to deny that any airport closure is a potential source of inconvenience and disruption for aircraft owners and those who seek airport facilities that are readily accessible to their work, home or place of recreation.

Privately owned airports are operated or closed by their owners on the basis of their costs balanced against the personal benefits realized. In several cases, the owners have sold their airport property for development of non-aviation uses simply to obtain greater economic returns. But the survey also indicated that many owners of small private airports have closed or limited them to private or personal use because of high liability insurance costs. In many cases these owners have never purchased liability insurance, but have become aware of the potential risk involved with unlimited public use of their facility. Rather than incur the cost of insurance to maintain public-use status, many have limited access to their airports to those who are familiar with them and who obtain prior permission. (Although records show that 240 privately owned airports--both public and private use--were closed in 1986, it was beyond the scope of this study to investigate the specific causes of those closures. Also, data were not available to determine the number of privately owned airports which were changed from public to private or personal use.)

A majority of airport operators and others familiar with airport management who were surveyed expressed anger and frustration at recent trends in liability insurance premiums. Although many remain skeptical about the future, there is evidence of optimism in the outlook of others. They noted, for example, that there are signs that the liability insurance crisis has peaked, that premium costs will stabilize, and that airport managers are becoming better informed about their options. Also, more local governments have employed full-time risk managers to lend expertise to that aspect of local government administration.

Twenty State governments implemented tort reform measures in 1986 and more are expected to follow. These measures, which include abolition or modification of joint and several liability, limits on non-economic damages and on contingency fees, as well as other limitations, are attempts to reduce the costs of litigation and the value of damage awards. Federal tort reform legislation has been proposed but not yet adopted.

In addition, several States and airport associations have moved to make liability insurance more affordable. Such efforts are expected to proliferate, due in part to passage of the Risk Retention Amendments of 1986 (Public Law 99-563), which permits businesses or governmental entities engaged in like activities to join together to set up their own insurance company to issue insurance policies only to themselves. Aviation associations have also placed the insurance topic on their annual meeting agendas to disseminate information and stimulate discussion. Inasmuch as insurance is predominantly

viewed as an operating cost, there is little support among airport managers and State officials for Federal grant-in-aid assistance to defray the cost of needed liability protection.

Airport capacity has not been adversely affected by the high cost of liability insurance. Because of their locations, airports which have closed due to insurance costs are not candidates for locally induced growth in based aircraft or operations, nor are they in positions to attract aircraft or operations from more congested facilities. Operational limitations due to minimal development, terrain or man-made obstructions are also factors which argue against aviation growth at these facilities.

Airport closures mean that some segment of the population has less access to air travel, but there are generally alternate locations available within a reasonable distance. There is no evidence that airport closures attributable to high insurance premiums have caused hardship for aircraft owners or that the aircraft and operations transferred to nearby facilities have aggravated congestion at these locations.

BACKGROUND

The Airport Liability Insurance Problem

Much recent attention has been focused on the general topics of liability insurance cost and availability, the size of court ordered or negotiated awards to claimants for damages, and the doctrine of joint and several liability--the so called "deep pockets" principle--which holds that a party found partially responsible for a loss may be liable for the entire award if other responsible parties are unable to pay their shares. This principle has led to a series of record judgments against manufacturers and local governments in cases involving manufactured products and public facilities.

There is widespread belief in the aviation community that liability insurance problems associated with its products, facilities, and services are more critical than those experienced by other producers of goods and services. General aviation manufacturers, for example, have stated that product liability is the largest cost component in the production of light aircraft, even though accident and fatality rates for these aircraft are lower now than 20 years ago. Airport operators have also expressed alarm at the rapidly escalating cost of liability insurance and, reportedly, cases of liability insurance being unavailable at any cost. Premium costs for fixed base operators (FBO) have escalated at least as rapidly as those for other businesses and government agencies. In cases where an airport has only one FBO, the airport owner may be forced to consider taking over refueling and repair services to maintain a source of revenue in the event the FBO closes. The cost of providing these services, including the cost of additional liability insurance, is of concern to those airports.

Congressional Interest

Congressional interest in special treatment of aviation community liability insurance problems is evident from several initiatives that were introduced but not enacted in the 99th Congress. For example, both houses drafted bills (S. 2794, H.R. 4142) intended to ease the product liability insurance burden on general aviation manufacturers by standardizing and restricting liability arising from general aviation accidents. Neither bill was enacted, and a Senate attempt to attach that provision to the appropriations bill failed.

In addition, both houses passed H.R. 4961, the 1986 Independent Safety Board Act Amendments. This bill included a Senate amendment calling for reports to Congress by the Department of Transportation and FAA "concerning the extent of and causes for the rapidly increasing costs to ... airport sponsors for general liability insurance coverage." The FAA was further directed to contract for the establishment of "an information clearinghouse concerning general liability insurance coverage at such public use airports." The bill was sent to the President who disapproved it by pocket veto, in part because it would unwisely lead the Federal Government to address the liability insurance issue "on an industry-by-industry basis."

Study Purpose and Methodology

The purposes of this study are to determine whether the increased cost or unavailability of general liability insurance has been a major cause of U.S. airport closures or reduced levels of service, and whether these costs have adversely affected airport capacity.

As a first step in understanding the relative importance of recent airport closures, it was considered helpful to review historical trends in the number and types of U.S. landing facilities. Data for 1986 were then examined in greater detail to quantify the extent to which airport closures or other impacts were caused by high liability insurance premiums.

Liability insurance data were gathered for over 200 airports ranging in size from general aviation facilities with no based aircraft to major air carrier hubs. The study methodology relied heavily on interviews of selected State aviation officials, airport management or support staff, FAA regions, and other individuals from the insurance and underwriting sector. The survey of State and local officials was intended to be representative rather than exhaustive. That is, States were selected to represent a range of population size and aviation activity, and airports were selected so as to provide samples of major commercial aviation hubs, small commercial service facilities, relievers, and general aviation airports. Finally, the Airport Operators Council International (AOCI) and the American Association of Airport Executives (AAAE) shared information gathered from surveys of their members.

All interviewees were invited to offer their opinions and insights concerning the outlook for future insurance premiums, effects on the national system of airports, and actual or suggested actions by governments or associations to

mitigate problems. The interviews were broad ranging and touched on many aspects of airport operation, maintenance, and finance.

The remainder of this report presents the findings of the study, beginning with historical data on the landing facilities available in the U.S. The next sections describe the varying liability coverage limits and costs and the claims history at those airports. This is followed by an analysis of insurance costs from 1985 through 1987 and a discussion of the impacts of rising premiums on U.S. airports.

The next two sections present a synopsis of the perspectives offered by interviewees in aviation-related positions and in the insurance industry, followed by their combined views on the outlook for future trends and their suggestions for potential actions to address future liability insurance problems. Last, there is an assessment of the impact on U.S. airport capacity resulting from increased liability insurance premiums.

FINDINGS

Airport Statistics

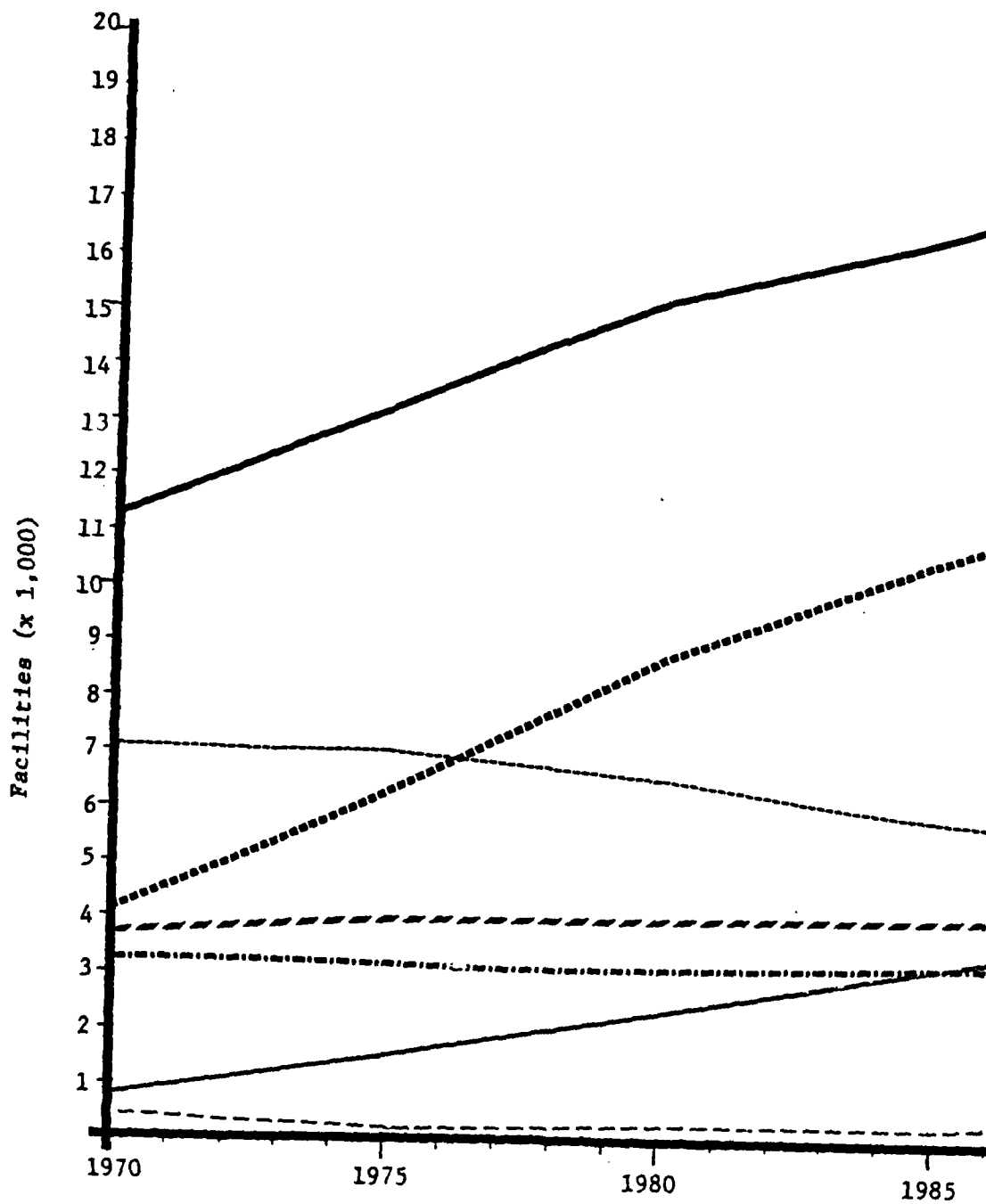
The total number of U.S. landing areas has grown steadily from 11,261 in 1970 to 16,582 in 1986. More than 10,800 of these facilities are restricted to private use, up from 4,117 in 1970. As of December 31, 1986, there were 5,775 U.S. landing facilities 1/ open to the public, excluding ultralight flightparks, gliderports, and balloonports. This is over 1,300 fewer than in 1970, an 18.5 percent decline. More than half of that decline occurred after 1980.

The number of heliports has grown dramatically in recent years. Many such facilities have been established by hospitals, police and fire departments, and other public service organizations. Since 1970, the number of heliports has grown four-fold to 3,336; only 115 (3.4 percent) are available to the public.

Of the 5,775 public-use landing facilities available in 1986, 4,007 are publicly owned airports--an increase of 243 such facilities since 1970. In addition, over 1,400 privately owned airports are open to the public, some of which have substantial numbers of based aircraft and operations.

1/ Figures given for the U.S. include the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, and the Pacific Islands.

FIGURE 1
U.S. LANDING FACILITIES
1970-1986



Total Landing Facilities	—————	NPIAS Airports	- - - - -
Private Use	Heliports	—————
Public Use	- - - - -	Abandonments	- - - - -
Public Use, Public Owned Airports	-		

The National Plan of Integrated Airport Systems (NPIAS) lists 3,243 existing landing facilities as of July 1, 1986, including 233 which are privately owned. Listing in the NPIAS reflects an FAA determination that a facility meets entry level criteria with respect to number of based aircraft and level or role of service. (Certain locational factors may justify the inclusion of a facility that does not meet the statistical criteria.) It is estimated that 97.3 percent of the U.S. population lives within 20 miles of a NPIAS airport.

Finally, the number of airports reported abandoned (that is, closed to all aeronautical activity) has remained relatively stable since 1970. On the average, about 350 facilities have closed each year, approximately 15 percent of which were available to the public.

These statistics are depicted in Figure 1. It is readily apparent that, in most categories, the trend is either toward more facilities or a stable number. The major exception is the number of facilities available for public use. Records filed with the FAA indicate that the primary reason for this is the conversion of privately owned facilities from public to private use. The remainder of this study focuses on publicly owned, public-use airports.

Liability Insurance Coverage

Airport liability insurance coverage ranges from zero to several hundred millions of dollars. Proprietors of some smaller airports have elected to continue operating without costly insurance so as not to lose access to air travel. Many others insure only up to a municipal liability limit established by State law, such as in North Dakota and Mississippi. Still others, hedging against the possibility of damage claims being filed in Federal courts, obtain much larger coverages commensurate with their assessment of potential risk. Near the top of this range, the Port Authority of New York and New Jersey has obtained coverage limits of \$440 million.

Because individual airport proprietors engage in a variety of activities in addition to maintaining and operating an airport, they seek liability protection suited to their needs. Airport managers typically oversee construction projects on the airport, administer leases, service and maintain aircraft, accommodate passengers and related automobile traffic, and some operate air traffic control (ATC) facilities. Up to 80 airports have some form of non-Federal ATC facility staffed by airport employees or a private ATC company under contract.

The public agency or local government which operates the airport generally must also provide coverage to officers and directors, termed "errors and omissions," to protect them against personal liability claims. This coverage typically ranges from \$0.5 million to \$10 million.

Although the intent of this study was to look at the insurance costs associated with airfield operations, it was impracticable to attempt to separate the components of total liability premiums so as to eliminate other needed coverages. In most cases, however, the data on premiums reflect those costs and coverages most directly attributable to airport operation.

Of the airports surveyed, those with air carrier service have greater liability protection than general aviation facilities. Information was obtained on the 1986 coverage limits of 138 commercial service airport proprietors which revealed that liability coverage ranged from zero to \$440 million. (About 40 percent have some deductible or self-insurance which may be as high as \$2 million.) The coverages fell about equally into three ranges: less than \$20 million, \$20 million to \$100 million, and \$100 million or more. Median coverage was \$50 million, and the coverage limit which occurred most frequently was \$150 million.

General aviation and reliever airports tend to operate with lower liability insurance coverage limits, excluding those owned and insured by proprietors who also have large air carrier airports (e.g., Ryan Field, a reliever to Tucson International, both of which are owned and insured by the Tucson Airport Authority). For 67 general aviation and reliever airports surveyed, 1986 coverage limits ranged from zero to \$50 million. As expected, those large relievers with substantial activity by high performance business aircraft (e.g., Oakland-Pontiac, Michigan) are at the upper end of range. In this limited survey, nine airports (13 percent) indicated that they are operating without any liability insurance. Nearly half (33) of the general aviation/reliever airports surveyed were insured for \$0.5 million or less.

Liability Insurance Premiums

The findings with respect to the range of coverages obtained by airport proprietors are reasonable, based on the diversity of activities in which they are engaged. The premiums for that liability protection, however, are less predictable.

For purposes of analysis, coverage limits were divided into four groups: less than \$1.0 million, \$1.0 million to \$10 million, \$10 million to \$50 million, and \$50 million and over. To aid in comparing unit costs, the total premium for liability coverage was calculated as the cost per million dollars of the airport's liability limit. Data were obtained from 107 airport proprietors for premiums paid in 1986. Somewhat fewer data samples were available for years 1985 and 1987, although they are adequate to indicate the trends.

Table 1 summarizes the median liability insurance premium rates paid in recent years by the airports surveyed. Two factors are immediately apparent: first, insurance becomes more economical as the coverage limit increases; and second, premium rates have increased for comparable coverage limits.

TABLE 1
AIRPORT LIABILITY INSURANCE
PREMIUM RATES
1985-1987

YEAR	LIABILITY LIMITS	LESS THAN \$1M	\$1M-\$10M	\$10M-\$50M	\$50M OR MORE	ALL POLICIES
1985	No. of Airports* Median Rate**	7 \$3,000	19 \$1,700	11 \$1,236	13 \$480	50 \$1,217
1986	No. of Airports Median Rate	34 \$2,050	37 \$1,806	17 \$1,700	19 \$735	107 \$1,900
1987	No. of Airports Median Rate	5 \$3,100	5 \$3,000	9 \$2,114	5 \$1,059	24 \$2,107

* Number of airports surveyed by category of coverage.

**Rate is the median premium cost per \$1 million of liability insurance coverage.

For example, the median rate for airports with less than \$1.0 million coverage in 1987 was nearly three times the median rate paid by airports insuring for \$50 million or more. Much of that difference is attributable to the agent's and underwriter's fixed cost in writing any liability policy. At very high limits of coverage, additional increments can be obtained at an essentially flat rate. In addition, the median rate in most categories of coverage has increased substantially since 1985, while the median for all airports surveyed has nearly doubled.

It was also noted that the cost of similar liability insurance coverage varied greatly among airports. In 1986, for example, the premium for \$5 million liability insurance at eleven airports ranged from \$5,700 to over \$36,000. For \$50 million coverage, the premiums at nine airports varied from \$17,000 to \$85,000. Stated differently, two airports obtained \$150 million of liability coverage for less money than two other airports paid for \$5 million protection (\$26,000 and \$33,000 for the higher coverage, compared to \$35,000 and \$36,394). While it might be expected that the risks at various airports within each group would vary somewhat, several aviation officials interviewed expressed concern that the premiums for similar coverage had such a wide variance. Figure 2 shows the range of premiums paid in 1986 for several representative levels of coverage.

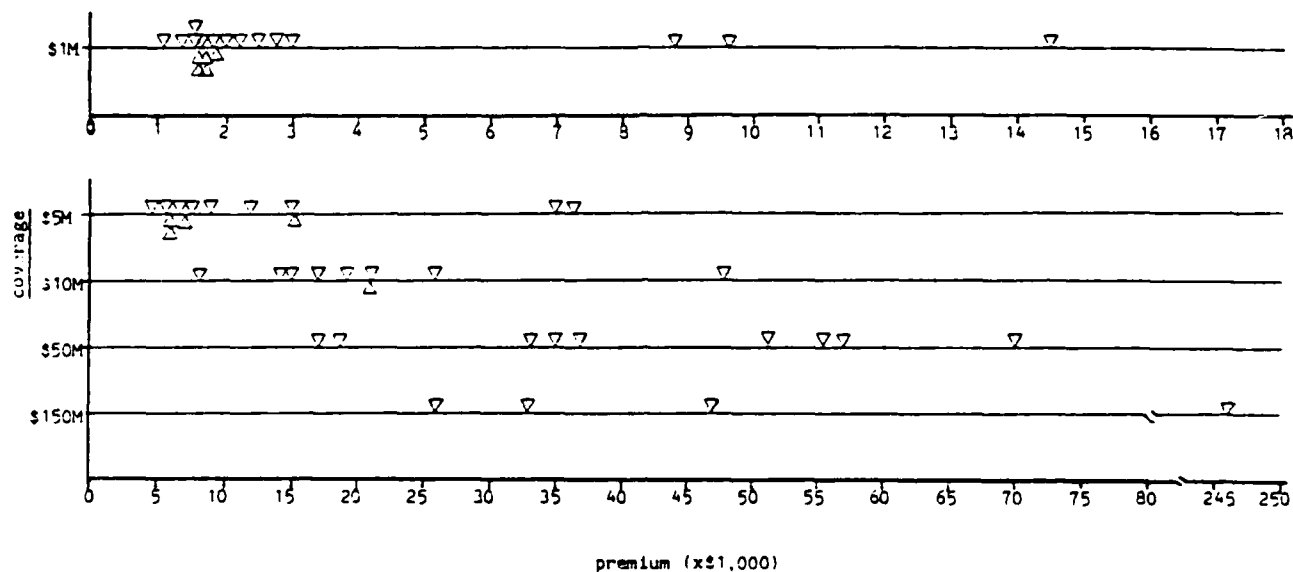
Of the airports surveyed, 57 provided two or more years of data from which to calculate the percent change in liability insurance premium from one year to the next. There were 82 such rate changes, 19 (about 25 percent) of which ranged from 100 percent to more than 600 percent. The median increase from 1985 to 1986 was 50 percent and 9 percent from 1986 to 1987.

It should also be noted that twelve of the airports surveyed had 1985-1986 premium increases of 10 percent or less and that there were five instances of rate reductions due to the purchase of higher coverage limits. In addition, eleven of the airports surveyed reported no premium rate increase between 1986-1987.

It appears that large rate increases are generally not sustained in subsequent policy renewals. In the 17 cases where three years of premium data were available, instances of large percentage increases in one year were usually offset by modest increases in the year preceding or following the large increase. At five locations where premiums increased by over 100 percent in one policy year, the increase in the other year averaged slightly more than 3 percent.

FIGURE 2

1986 PREMIUMS PAID FOR SELECTED
LEVELS OF LIABILITY COVERAGE



An earlier survey conducted by the Michigan Aeronautics Commission also showed that rate increases tended to moderate after one large adjustment. Of the 44 airports which provided at least two consecutive years of data on premiums, 19 airports reported at least one increase of 100 percent or more. Only two, however, reported more than one such increase. In all cases large increases were tempered with more moderate (although often substantial) increases. In the 1985-1986 period, the median increase at those Michigan airports was 49 percent.

Claims History

The overwhelming majority of damage claims filed against airports are for "slips and falls" in passenger terminal facilities. Aircraft mishaps resulting in claims against the airport are relatively rare, and awards of damages in such cases are even more rare. The high dollar value of awards and the costs of defending against such claims, however, contribute substantially to rate-setting for this portion of overall liability coverage. For example, one airport reported an incident in which a pilot took off in poor weather with an overloaded aircraft. The aircraft struck high ground several miles from the airport resulting in a fatality. A claim was subsequently filed against the airport which, although not as yet settled, required a substantial reserve to be set aside against an award of damages.

Impacts of Rising Liability Premiums

Having found that airports, like local governments, businesses, and manufacturers, have experienced substantial increases in liability insurance costs, the question of impact is the next to be studied. Many interviewees commented on the difficulty in budgeting for such added costs, particularly when the new premium is announced just 30 days before the policy renewal date. In such cases, a frequent consideration in small communities was closure of the airport.

Notices filed with the FAA indicate that 48 public-use airports in 32 States were closed to all aeronautical activity during 1986. Twelve were publicly owned airports, none of which were listed in the NPIAS. (One privately owned NPIAS airport, Phoenix Field at Fair Oaks, California, was also closed.)

Seven of the twelve publicly owned, public-use airports abandoned in 1986 were closed for reasons primarily unrelated to insurance concerns. Two were replaced by newly constructed airports built with AIP assistance. One State owned facility was closed because resources were not available to maintain its turf runway. Another, leased from the Corps of Engineers, was abandoned due to limited activity (one agricultural spray applicator), no revenue, and lack of resources for maintenance. Yet another closure occurred at a Bureau of Land Management facility leased to an individual who terminated its use for unknown reasons. A sixth airport was closed subsequent to a land swap in which the city obtained a more fully developed facility. Finally, one airport was sold to raise funds for other municipal projects.

In the remaining five communities, however, the cost or unavailability of airport liability insurance (or simply the unwarranted and unwanted liability) was cited as the primary reason for closing. Each is a small, rural community with primarily seasonal airport activity. A brief description of each location and its reason for closing follows.

Grace, Idaho - This airport has a 3,750 foot paved runway 5,600 feet above sea level. There were two based aircraft and additional itinerant use during spring and summer due to agricultural spraying operations. Following a minor accident which occurred while taxiing, a pilot filed a claim against the airport. The city became concerned about its liability and decided to sell the airport. It was purchased by a group of ten local farmers who continue to operate it as a private facility in support of agricultural spraying. Owners of the two based aircraft have arranged with the new airport owners to continue basing their planes there. The nearest NPIAS airport is Prescott, about 30 miles away.

Lancaster, Minnesota - This airport, located in the northwest corner of the State, had a 2,600-foot turf runway limited to summer use. There were no aircraft based there when it closed due to the costs of liability insurance in addition to needed drainage repairs. The liability insurance coverage for the airport would have cost approximately \$1,000 more than the general liability protection carried by the town. With no revenue and low activity at the facility, the city decided to close it. The nearest NPIAS airport is at Hallock, 12 miles away.

Carter, Montana - This 1,900 foot turf runway was closed when the needed maintenance cost, plus the liability insurance cost became unacceptable. The airport had no based aircraft and no appreciable operations, except for seasonal use by agricultural spray applicators. There is local interest in a new site, but no definite steps have been taken to plan, acquire, or develop a new airport. Fort Benton, about 14 miles away, is the closest NPIAS airport, while Great Falls is within 25 miles.

Eagles Mere, Pennsylvania - The airport, with a turf runway 2,170 feet long, was closed because the borough could not get liability insurance coverage. About one month before the policy renewal date, the agent was notified that insurance would not be available at any cost. There were no based aircraft, no revenue, and low seasonal use, primarily by visitors to this recreational area. This community is the farthest of those discussed here from a NPIAS airport--34 miles to Williamsport.

Phelps, Wisconsin - This privately owned airport was leased from a private club and operated by the town until it was notified that its 1986 liability insurance premium would be increased approximately 250 percent over the previous year. Consequently, the town terminated the lease and subsequent operation was established by a private party lessee. Operations and tie downs for based aircraft are essentially limited to members of the club which still owns the property. (No airplanes were forced to relocate as a result of the closure.) The 2,650 foot turf runway is not maintained for winter use. Eagle River, the nearest NPIAS airport, is about 20 miles away.

Although the Blue Canyon-Nyack airport at Emigrant Gap, California, had not closed when this survey was conducted, it was scheduled to do so and is included here for discussion. The airport has a single 3,300 foot paved runway at an elevation of nearly 5,300 feet in the Sierra Nevada Mountains northeast of Sacramento. The airport, owned and operated by Placer County, has no based aircraft and no aeronautical services. Liability insurance premiums have gone from \$2,000 three years ago to \$6,000 for the 1986-1987 year. No revenue is derived from the airport, but the county receives an annual \$5,000 grant (as do all airports included in the State plan) from the State for any aeronautical related purpose. The airport has been operated for the benefit of the public as a training and emergency landing facility, but the county has decided that maintenance and insurance costs dictate that the airport be closed. Consequently, in early March 1987, the board of supervisors voted to close the airport effective July 1, 1987.

Airports that operate or contract out for air traffic control (ATC) services have faced even stiffer increases in premiums. Many have considered closing due to insurance becoming unavailable or exceedingly costly. For example, Ryan Field, near Tucson, Arizona, had a contract ATC tower with liability insurance coverage of \$10 million. When the premium was raised to \$100,000 for \$1 million coverage, the contractor defaulted and the tower was closed. Although the airport continues to be a busy general aviation facility, the Tucson Airport Authority has not taken steps to reopen the tower. Also, Gary, Indiana, has operated a non-Federal ATC tower since 1968. In 1986, when the liability insurance premium was increased to \$86,000 for \$1 million coverage, the city elected to continue operation without insurance. Airport general liability coverage has been maintained, although the deductible amount has risen to \$25,000.

Airport Management Perspectives

Airport managers and others close to aviation express exasperation at the trend in liability insurance premiums. Even though they generally do not see their facilities threatened with closure, they feel captive to a small number of underwriters and insurers who seem to arbitrarily hike the premium on each anniversary date of the policy. Among the comments:

- "Even though we have never filed a claim, our premium is raised because some other airport got sued for damages."
- "When KAL-007 or the space shuttle goes down, we pay for it."
- "We had 72 hours to come up with \$500,000 to pay for additional liability coverage during a construction project."

Particularly at smaller airports, there is the perception that there is no allowance for good maintenance, low risk, or other factors that might distinguish them from other airports with similar activity levels. Many airport managers also believe that their premium was established without an inspection by the underwriter or an agent.

Many interviewees expressed the opinion that there were not enough domestic underwriters to generate competition, and that the insurer could set a "take-it-or-leave-it" premium, leaving the airport owner little recourse. This perception is even more strongly held with respect to "reinsurance" obtained through Lloyd's of London, as is commonly done when domestic underwriters do not have the needed underwriting capacity.

A large proportion of the interviewees noted that, in the matter of insurance costs, the experiences of airport proprietors parallel closely those of other public officials, organizations, professionals, and manufacturers. Many noted that the local government which owned the airport had experienced increased insurance costs commensurate with those for the airport.

Finally, there is the almost universally held opinion that costs to defend against damage claims and the damage awards are excessive, both in number and amount. Airport managers believe that the tendency of insurers in many cases is to negotiate a settlement, even though the claim is weak, to avoid hundreds of thousands of dollars in attorney's fees in a case that may be decided on a seemingly irrational argument.

Insurance Industry Perspectives

The insurance industry responds to criticism of overcharging by citing their loss records, and the need to make a profit to stay in business. They, like airport managers, cite the liberal damages awarded by the courts and the high cost of defending against claims, many with little or no merit.

One example cited was of a mishap in which a pilot operated an aircraft inconsistent with the policy provisions related to crew complement, carriage of passengers, and the requirement to operate in visual weather conditions, i.e., clear of clouds. Nevertheless, plaintiff was awarded damages because the court ruled that pilot was in visual flight conditions upon breaking out of an overcast 100 feet above ground.

Insurance experts tend to agree that there is insufficient domestic underwriting capacity, hence the need to seek offshore markets, principally Lloyd's of London. U.S. observers report strong pessimism among the Lloyd's underwriters with respect to damage awards which outstrip those in any other country for comparable losses. Consequently, the underwriters at Lloyd's are not inclined to quote favorable rates for U.S. clients.

Most domestic underwriters cover a variety of aviation-related risks--airplanes, parts, airports, FBOs, etc. Some specifically exclude ATC operations. Paid claims are spread across all insured categories so there is some truth to the belief that a loss involving a distant aviation mishap may affect the premium charged to an airport unrelated to the loss.

Underwriters state that they set airport liability insurance premiums after an airport inspection or at least after review of a questionnaire filled out by the airport manager or an insurance agent. Factors of interest are management staff size and qualifications, size and capacity of facilities, structures, airport proprietor services (FBO, ATC, etc.), types of airport users, and certification under Part 139 of the Federal Aviation Regulations. A site inspection might also evaluate the significance of obstacles in the approach and departure corridors, structures encroaching on the runways, physical condition of the paving and other maintenance-related items.

Although each insurer may evaluate the airports it covers, data bases for rate-setting apparently vary greatly from one underwriter to another. This data is not shared among insurers and there is no standardization in the factors determining risk and premiums. Consequently, airports which appear to be similar with respect to activity, level of development, etc., may pay substantially different premiums for equivalent coverage as was shown in Figure 2.

Outlook

There is an unexpected level of optimism expressed by airport managers and state aviation officials with respect to future trends in airport liability insurance premiums. A majority was resigned to future increases in cost, but felt that the worst shocks had passed and they could continue to operate without further hardship. Several interviewees noted that there seem to be more underwriters willing to write coverage, and that rates in some cases have held steady. Among the indicators are the following:

-- Both the Airport Operators Council International (AOCI) and the American Association of Airport Executives (AAAE) have programs to aid their members in obtaining insurance. The AOCI has had its program in force for about eight years, and over 100 air carrier airports participate in the program. The AAAE has begun its effort more recently, but the broker with whom they have contracted reports that interest is growing as information is disseminated to more airport managers. Additional underwriting capability is appearing offshore to provide an alternative to Lloyd's.

-- Some States have moved to establish a "risk pool" to help airports obtain insurance. Several others are stepping up information programs for airport managers to acquaint them with alternatives to a "take-it-or-leave-it" premium. These efforts, as well as a similar initiative by the AAAE to establish "risk retention groups," may be strengthened as a result of the enactment of the Risk Retention Amendments of 1986. The act preempts certain state laws and regulations that tend to inhibit the formation of liability risk retention groups and purchasing groups. Under the provisions of the act, state and local governments are allowed to form such groups for acquisition of liability insurance or to set up their own insurance company only to issue insurance policies to themselves.

-- Tort reform was a popular issue in the 1986 elections. The American Tort Reform Association reports that 20 States, shown in Figure 3, representing nearly one-half the U.S. population, undertook some form of action, including:

- Abolition or modification of joint and several liability (twelve States).
- Limits on non-economic damages (eight States).
- Reduction of compensatory awards by collateral sources (ten States).
- Limits on contingency fees (nine States).
- Limits on punitive damages (nine States).
- Provision for periodic payments (eight States).

Although most state and airport officials contacted have seen no effect yet from these actions, there is guarded optimism that they may be of benefit in the future. There were many comments suggesting that state actions would be ineffective without Federal tort reform. Insurance industry representatives echo that view.

-- Interest rates have fallen and foreign exchange rates (particularly vis-a-vis the British pound) have stabilized, providing a more favorable climate for international and domestic underwriting.

-- Some interviewees commented that the insurance industry is somewhat "cyclical," and that the surge in liability insurance premiums has about run its course. This portends a stabilization or possibly a slight decline in premiums.

Action Alternatives

Airport officials were unanimously of the opinion that "something" should be done. There is, however, less unanimity on just what the best actions would be.

A clear favorite in the view of state and local airport officials is some Federal action in tort reform. The specific points to be addressed in that effort are beyond the scope of this study but they would include consideration of measures such as those enacted by the States, as noted above. In addition, there is interest in stronger evidentiary standards in cases involving aviation mishaps. It has been noted that product liability tort reform is also a topic of discussion within, as well as outside, government. As a companion to tort reform, it was suggested that the rate-setting procedures of insurance underwriters should be improved.

The States and aviation associations have begun programs to enhance the ability of airport managers to obtain information about alternative sources of insurance. These appear to be effective and are expected to continue. The information campaign will be most effective at smaller airports where the staff is limited. Individual airport managers will be encouraged to share their experiences with their peers.

It was also learned that some airports which have only seasonal use are not insured during winter months. In such cases, the airport proprietor pays an annual premium, then applies for a rebate after certifying that the airport is closed for the season. Under this scenario, the airport is available for public use during the summer months, but the owner does not incur the insurance cost during periods when the airport is not used.

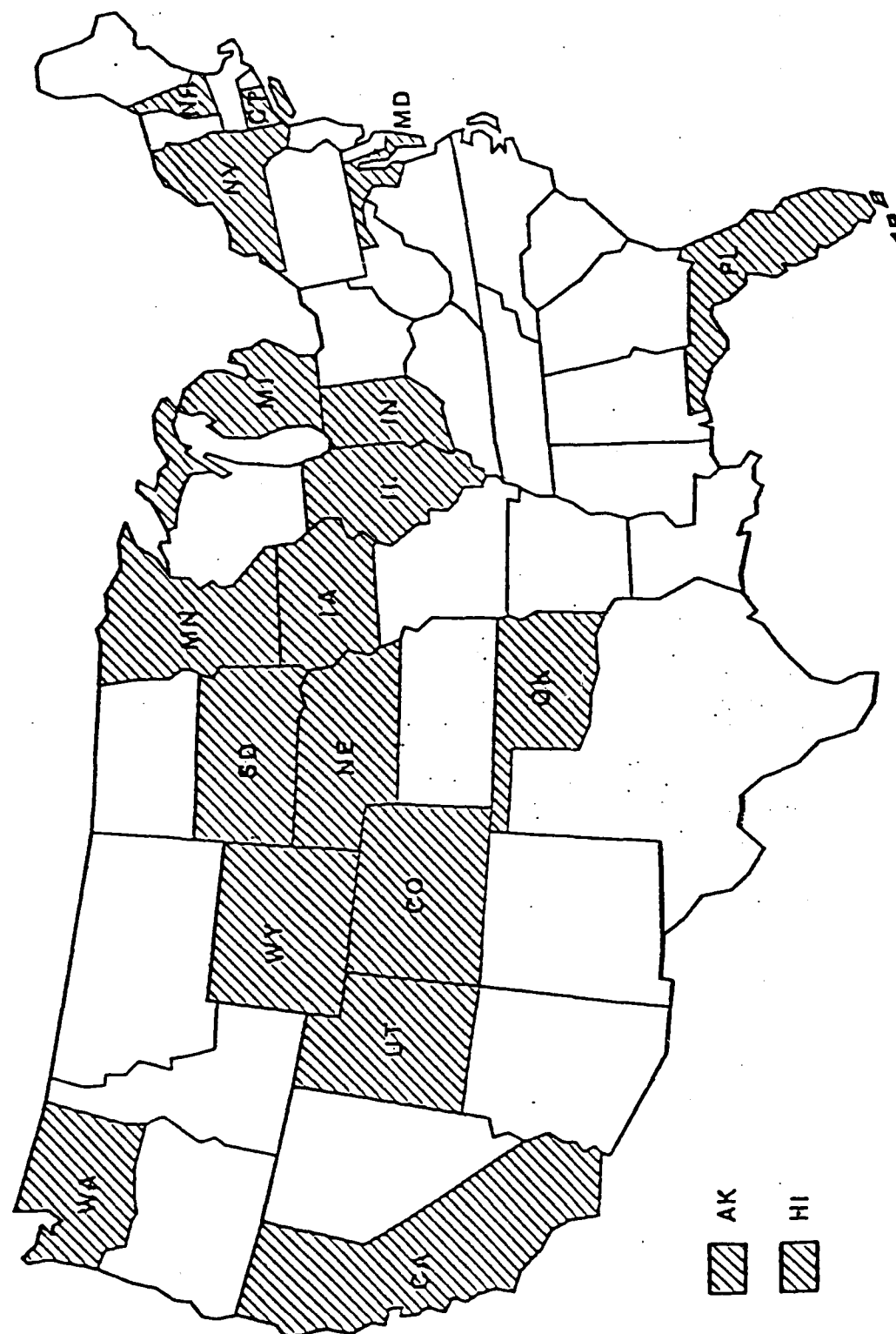
There is little support for the use of aviation trust fund monies for payment of liability insurance premiums. Only one State official and five airport managers supported this concept. Such use of the trust fund, these commenters said, should be limited to those airports at the point of closure due to financial hardship. The majority of airport officials expressed the view that trust fund monies are intended and should continue to be used only for eligible planning and capital projects and not for operating costs, including airport liability insurance.

EFFECT ON CAPACITY

Airport capacity may be defined in two ways--either the capacity of a single landing facility or the overall capacity of the national system of airports. Under the first definition, an adverse effect on capacity might appear as a reduction in operating hours, decreased aviation services, a ban on operations by certain types of aircraft, or an airport closure.

FIGURE 3

STATES ENACTING TORT REFORM IN 1986



With the exception of the five airports discussed above, no closures of publicly owned public-used airports in 1986 have been directly attributed to the cost or unavailability of airport liability insurance. No airport surveyed had limited operations in any way due to the increased cost of insurance, nor had any implemented cuts in maintenance or administrative staff. The total loss in capacity of based aircraft did not exceed twelve at all the airports. It is estimated that the maximum number of annual operations accommodated these airports did not exceed 15,000. Information gathered in the survey indicates that aircraft and operations were easily absorbed at nearby or newly privatized airports. The results of this survey also indicate that other airports which may close due to high liability insurance premiums would be similar in level of activity to those described above.

At least one airport has closed its air traffic control tower due to the high cost or unavailability of liability insurance. This facility, at Ryan Field, Tucson, Arizona, was not established by the FAA, but rather by the airport proprietor and operated under contract by a private ATC firm. Air traffic at Ryan field does not meet FAA criteria for establishment of an ATC tower, and consequently the tower's closure is not viewed as an adverse impact on airport or system capacity.

One other aspect of local capacity was of interest in this survey. The recent rebound in air travel has stimulated the restoration or establishment of new scheduled commercial service at many airports. It was hypothesized that an airport in transition from the general aviation/reliever role to commercial service would be reluctant to admit an air carrier because of the additional liability insurance cost. The interview data do not support this hypothesis, however. Apparently, such airports have sufficient revenue, and the prospect for substantial revenue growth, to accommodate such costs.

Finally, with respect to any adverse effect on the national system of airports, there is no evidence to support the assertion that liability insurance costs are a significant factor in reduction of capacity. The publicly owned public-use airports which closed in 1986 did not qualify for inclusion in the NPIAS and were within reasonable distances of NPIAS airports. Based aircraft were easily accommodated either at a nearby facility or under a new arrangement with a new private airport owner. It is estimated that the number of aircraft operations hosted at these facilities was less than 0.03 percent of all operations in 1986. None of these operations were shifted to congested airports, although the gaining airports may have benefited from the added revenue.

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